

**WISCONSIN ATTORNEYS IN SELECTION OF VOCATIONAL
EXPERT WITNESSES**

by

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ABSTRACT

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The purpose of this descriptive study is to rank order the vocational characteristic competencies, as perceived by Wisconsin attorneys that specialized in Workers' Compensation cases, when selecting a vocational expert.

The study approached from Rehabilitation Act to Workers' Compensation in private sector. Several factors were identified how the rehabilitation professionals have acted as a vocational specialist to assist courts and attorneys to determine an injured worker's vocational potential and earning capacity.

Then, the issues of admissibility and inadmissibility of evidence are reviewed. In addition, the role of vocational expert in determining an injured worker's vocational potential and earning capacity in courts of law was reviewed. Many studies also showed that vocational rehabilitation specialist feel less prepared in expert testimony and legislation.

Several vocational competency criteria have been established through the review of literature. The vocational competency criteria from the viewpoint of practicing workers' compensation attorneys, when selecting a vocational expert are credibility, education of witness, ability to document claimant's loss of earning capacity and cost.

This study indicated that there were 90.29% of the respondents utilized the services of vocational expert witness. Moreover, in average, there were 5.91 vocational expert witnesses were used by the respondents per year.

Competencies rated by the respondents in their selection of a vocational expert witness were also identified. It was indicated that "ability to document claimant's loss of earning capacity" ($M=2.14$, $SD=2.79$) was perceived as the most important competencies by the respondents.

It is recommended that this study be replicated in another state to assess the differences and the similarity of the outcome. It is also suggested that the information that was obtained in this study be utilized to enhance the quality of curriculum development in vocational rehabilitation.

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CHAPTER 1

Introduction

According to Worker's Compensation Division, Department of Workforce Development in Wisconsin, the workforce has gradually been increasing from a low point in 1991 of 2,229,602 to a high point in 1995 of 2,418,898. This is a 7.8% increase in workforce. With the increasing of the workforce in Wisconsin, Overexertion is reported as the most frequent type of injury in 1994-1995, with over 19,000 claims each year. Besides, Wisconsin's rate of on-the-job injuries and illness are 11.5 incidents per 100 full-time workers in 1995, according to the report by the Wisconsin State Department Industry, Labor and Human Relations.

Workers' compensation statutes were first enacted in 1911 (Falaris, Link & Staten, 1995). The statutes provide compensation to injured workers in the form of income replacement and medical expenses. Generally, the service of workers' compensation rehabilitation was to focus on return to work when an employee recovered from illness or injury.

To protect the right of the injured workers and to estimate the work potential or earning capacity of the injured workers, the rehabilitation professionals have increasingly gotten involve in legal matters as an expert witness.

Weed & Field, 1994 noted that many rehabilitation professionals have acted as a vocational expert (VE) to provide assistance to courts and attorneys. They assist in testimony about the financial impact of an accident and the loss of access to the labor market of injured worker (P.18).

Weed & Field also stated that the VE is required to have knowledge and skills in the area of vocational assessment and placement (P.25). Furthermore, their education, experience and professionalism are seen as the important characteristics when they appear in the testimony.

However, Weikel, 1986, reported that, "work as an expert witness is a legitimate function for counselor; however, it is one for which counselor typically have no preparation"(p.524). Besides, in the recent study of Leahy, 1998, found that with expert testimony, legislation and regulation are the two knowledge areas that the rehabilitation specialists feel less prepared. The studies indicated that for different reasons such as education, training or lack of exposure, many rehabilitation specialists are unprepared to work as an expert witness in the legal realm.

Statement of the Problem

The purpose of this descriptive study was to rank order the vocational characteristic competencies, as perceived by Wisconsin attorneys that specialized in Workers' Compensation cases, when selecting a vocational expert.

This study will determine the rank order of the vocational characteristic competencies through a survey of attorneys rating the qualification that they request in an expert witness.

This is a replication study of Burkholder, N., 1989. This study was replicated by selecting the attorneys from the whole state of Wisconsin instead of the cities of Appleton, Green Bay, Madison, Milwaukee, and Superior. The population of the study was also replicated by selecting the attorneys who specialized in the Workers' Compensation according to West Legal Directory.

Objectives

1. Are the services of a vocational expert witness utilized in the litigation of Wisconsin Workers' Compensation claims?
2. How many vocational expert witnesses are utilized by a Wisconsin Workers' Compensation attorney per year?

3. How do Wisconsin attorneys rate the vocational characteristic competencies when selecting a vocational expert?

The competencies the attorneys were requested to rate were determined through literature review and with vocational rehabilitation professionals. This was mainly based on a survey of Wisconsin attorneys of Burkholter, N., 1989.

Definition

Admissible- "Refers to evidence which is received by the trial court to aid the judge or jury in deciding the merits of a case and determining not only liability but also the extent of the damages award. It is the judge's determination, based on applicable state or federal rules of evidence, as to which evidence may be ruled admissible or inadmissible"(Deutsch, 1990).

Appeal- "The complaint to a superior court of an injustice done or error committed by an inferior court, whose judgement or decision the court above is called upon to correct or reverse"(Deutsch, 1990).

Case Law- "Law pronounced by judges which has evolved through court determinations or holding from given sets of circumstances, which are then applied again to same or similar circumstances"(Deutsch, 1990).

Claim- "Injuries reported to Workers Compensation in report calendar year that had Indemnity paid. Medical only or other non-compensable claims are not included"(1994-1995 Wisconsin Report on Worker's illness and Injury Claims, p.1).

Cross examination- "Questioning the witness after the other side has completed direct examination. Generally, the person conducting the cross-examination must limit him/herself to the topics or subject matter raised during the direct examination of this witness by the other side. At trial, hearing, or upon taking of deposition" (Weed & Field, 1994, p. B-4).

Damage- “Those that did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff” (Weed & Field, 1994, p. B-4).

Earning capacity- “Ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training” (Weed & Field, 1994, p. B-7).

Expert witness- “An expert is a skillful or experienced person, or possessing special or peculiar knowledge acquired from practical experience. A witness who has been qualified as an expert and who thereby will be allowed to assist the jury in understanding complicated and technical subjects not within the understanding of the average lay person” (Weed & Field, 1994, p. B-8).

Forensic rehabilitation- “Rehabilitation as related to legal principles and cases; required to enabled a court of law to arrive at a proper conclusion on a contested question affecting a disabled person’s life or property” (Weed & Field, 1994, p. B-8).

Negligence- “The doing or failing to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human fears, would do, or the doing of something which a reasonable and prudent man would not do”(Deutsch, 1990).

Statutory law- “Law which is enacted by legislative bodies”(Deutsch, 1990).

Total disability- “Exist if the individual is unable to return to preinjury employment and unable (due to an injury) to obtain employment with similar livelihood” (Weed & Field, 1994, p. B-19).

Placeability- “economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job” (Weed & Field, 1994, p. B-14).

Vocational rehabilitation counselor- “specializes in working primarily with individuals who are psychologically, mentally or physically impaired in helping them to make vocational adjustments, included adjustment counseling, career counseling, rehabilitation planning, etc.” (Weed & Field, 1994, p. B-20).

Worker compensation- "an employee will receive compensation for wages, medical and other costs for an industrial accident without having to prove the employer was negligent"(Weed & Field, 1994, p. B-20).

Workforce- "Employment covered by Unemployment Insurance, excluding farm workers and federal government employees" (1994-1995 Wisconsin Report on Worker's illness and Injury Claims, p.1).

CHAPTER 2

REVIEW OF RELATED LITERATURE

Workers' Compensation

In the nineteenth and early twentieth centuries, the economy of the United States had experienced the rapid industrialization. The industrialization was associated with a surge of workplace injuries, disease, and deaths. The peak in the number of workplace fatalities was reached in 1907 when more than 7,000 workers were killed in two industries: railroading and bituminous mines (Somers & Somers, 1954, p.9).

The fatality rate resulting from accidents significantly declined during the twentieth century to 5000 workers in 1994 (Kaufman, 1997). However, unlike the fatality rate, the workplace injury rate has not continued to decline throughout the twentieth century. The Bureau of Labor Statistic (BLS), 1997, reported that the injury frequency rate was 10.6 cases per 100 workers per year in 1973. The rate declined to 7.5 in 1983. Then, it climbed to 8.3 in 1992, and dropped to 7.5 cases per 100 workers in 1995.

Workplace fatalities from accidents have declined somewhat throughout the twentieth century. Nevertheless, the workplace injuries currently showed no continuing improvement.

On the other hand, employers voluntarily devoted to improve the workplace safety and health (Kaufman, 1997). The purpose of improving workplace safety is to reduce costs resulting from injuries and disease.

For the purpose of improving workplace safety, the tort system was available for recovering damages from employers at the beginning of the twentieth century. However, workers found that, in many cases, employer negligence, necessary for establishing employer liability for the cost of an injury, was difficult to prove in court (Berkowitz & Berkowitz, 1985).

In response to these conditions, industrialized areas in the United States relied on government regulation to encourage prevention of workplace injuries and disease. Several approaches to the prevention of workplace injuries and disease have been adopted as government policy in the United States. One of the approaches was workers' compensation which has compensation of disabled workers as an additional goal (Kaufman, 1997).

The first workers' compensation statutes were enacted in 1911 and by 1920 all but six states had passed such statutes (Falaris, 1995). The statutes provide compensation to workers who were disabled by work-related injuries and diseases or to the survivors of workers killed at work. In other words, workers received the guarantee of certain and timely compensation for their injuries on the job, without having to demonstrate employer negligence. The compensation is in the form of income replacement and medical cost (Workers' Compensation Division, 1994-1995). According to Rasch, 1985, the principle underlying workers' compensation is that "industrialization benefits everyone in society. Since injury and death are inevitable in industrial activity, everyone in society should help bear the economic consequence"(p.37).

In workers' compensation, the employer is liable for all work related injuries whether they result from the employer's negligence or not (Post, 1976).

It is important to emphasize that workers' compensation system is a compromise between the economic interests of injured workers and employers (Rasch, 1985). In this compromise, injured workers are supposed to exchange the right to sue their employers for a guaranteed partial compensation of their losses regardless of fault.

Unlike the state-federal rehabilitation program where federal guidelines result in a uniform program, workers' compensation is the concern of each state. This has resulted that each state has a unique workers' compensation law (Rasch, 1985).

In 1978, Chamber of Commerce of the U. S. laid out six basic objectives that underlie workers' compensation:

1. To provide sure, prompt, reasonable income and medical benefit to work accident victims or their dependents, regardless of fault.
2. To provide a single remedies and reduce court delays, costs and work loads which arise as a result of personal injury litigation.
3. To relieve public and private charities of financial drains which result from uncompensated industrial accidents.
4. To eliminate payment of fees to lawyers and witness as well as time consuming trials and appeals.
5. To encourage maximum employer interest in safety and rehabilitation through appropriate experience rating mechanisms.
6. To promote a frank study of the causes of accidents (rather than concealment of fault) reducing preventable accidents and human suffering.

Rasch, 1985, pointed out that although these objectives are important, they had been unequally met by many states workers' compensation laws. There were many inadequate medical, income replacement and rehabilitation benefits in many states.

In 1970, Congress enacted the Occupational Safety and Health Act (Rasch, 1985). The Occupational Safety and Health Act (OSHA) called for the creation of a National Commission on Workmen's Compensation laws. The calling was to enforce mandatory federal standards for industrial safety and health.

The report of National Commission was highly critical of the workers' compensation system. The report made some recommendations to improve the workers' compensation system. The

recommendations included: broad coverage of employees work-related injuries and disease; protection against interruption of income; safety encouragement; and an effective system for delivery of benefit and services (National Commission of State Workmen's Compensation Laws, 1972).

The recommendations that were covered in the National Commission's report helped directing state legislatures toward the reforms of workers' compensation.

Since 1972, the states have been very active in reviewing and rewriting their workers' compensation laws. During 1981, there were more than 1500 bills related to workers compensation. The bills were introduced in 49 state legislatures (Worker's Compensation Division, 1993).

Most of the attention in workers' compensation reform has been directed toward issue such as the adequacy of income replacement benefits, mandatory insurance protection for all workers, and full coverage for medical expenses and occupational disease. In addition, the importance of vocational rehabilitation has not been ignored (Rasch, 1985).

In Wisconsin, an injured worker may receive up to 40 weeks of additional benefits while taking rehabilitation training on approval of the state Division of Vocational Rehabilitation. Under the law, the Workers' Compensation Division may extend this period if further training is advisable (Worker's Compensation Division, 1993).

Historically, rehabilitation counselors were trained specially to work in public agencies. Furthermore, they were often prohibited from acting as an expert witness in personal injury litigation (Weed & Field, 1994). During the 1960s', rehabilitation counselors entered the private sector for the first time when International Rehabilitation Associates was established. International Rehabilitation Associates was formed by an insurance company to help processing

and managing insurance claims. Later on, by 1990s' private sector rehabilitation has extended heavily into workers' compensation (Weed & Field, 1994).

Usually, the service of workers' compensation rehabilitation was to focus on return to work when an employee recovered from illness or injury. There are five general classifications based on degree of disability, which was covered under workers' compensation. There are temporary total disability, temporary partial disability, permanent partial disability, permanent total disability and survivor (Workers' Compensation Act of Wisconsin, 1996).

In general, a physician provides work restrictions and releases the employee to return to work. At the same time, the rehabilitation consultant pursues the employment option for the injured workers.

According to Deneen & Hessellund, 1981, the most important part of the vocational rehabilitation counselor's work is leading an injured worker to gainful employment. Thus, the vocational assessment has been used to evaluate an individual's vocational potential. As Pruitt emphasized, 1986, " the primary purpose of vocational evaluation is to enhance the probability that individual will be able to enter into and remain within the work force of our economy" (p.2). Undoubtedly, vocational evaluation is a measurement of an individual's vocational potential. With the establishment of vocational potential, the consultation of the rehabilitation counselor is needed. The consultation of rehabilitation counselor is needed for the determination of an individual's earning capacity within vocational alternatives. Moreover, the rehabilitation counselor may want to determine an individual's loss of access to the labor market because of the disability (Weed & Field, 1994). This procedure increasingly becomes common in the workers' compensation arena; especially when testimony is provided in courts of law (Weed & Field, 1994).

Weed & Field, 1994, observed that over the past five to ten years, many rehabilitation professionals have acted as a vocational expert (VE) to provide assistance to courts and attorneys. Their role as an expert witness is to assist the courts and attorneys in identifying the effect of injury on an individual's vocational potential and money earning potential.

Case Law

According to the Federal Rule of Evidence 702, " if scientific technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

The emphasis in the FRE 702 indicates that the expert witness must be knowledgeable and skillful in using that knowledge. She/he must be able to show her/his knowledge in the case in testimony. Furthermore, she/he must be able to show her/his peculiar knowledge acquired from practical experience (Field & Sink, 1981).

According to American Law Report Digest (89 ALR 3d 799), there are some cases which witnesses were shown to have special qualification in employment, vocational counseling, rehabilitation, and similar field. The witnesses shown were held competent to express an opinion that a person with assumed or proved disabilities was or was not employable in a particular trade, occupation, or profession.

Experts Testimony Which Was Held Competent

In *Murray v Hecla Mining Co.* (1977) 98 Idaho 688, 571 P2d 334, it was a case of the owner and manager of a private employment agency. This agency was shown to be generally familiar with a workers' compensation claimant's physical condition and experienced in the general area of industrial employment placement. The testimony was held to be competent because the

witness observed that the worker's disability range was 50 to 80 percent. The witness also expressed that the worker could engage in some light industrial work if employment could be found.

In another case of *Lewis v Davidson Sash & Door Co.* (1975, La App) 319 So 2d 800, the expert opinion testimony was held to be admissible as well. This is a case of a workers' compensation proceeding to establish the effect of an established disability on the worker's employability. The court noted that the witness had given an opinion concerning the medical degree of disability, but simply described the effect of the obvious disability on people who have similar situation in the job market.

In *Fochtman v Department of Labor & Industrial* (1972) 7 Wash App 286, 499 P2d 255, the court found that the testimony of a qualified vocational consultant was desirable and admissible to establish total disability. The testimony was based on the vocational consultant's personal evaluation and testing of the employee. In addition, it was also based on the facts relative to the labor market. The testimony was found to support a finding of total disability sufficiently.

Experts Testimony Which Was Held Incompetent

On the contrary, some cases were found to be held incompetent in the testimony of expert witness. According to ALR Digest (89 ALR 3d 801), the following cases of the testimony of witness was held inadmissible. The presentation of the experts in vocational training and labor management was denied by the courts because the witness did not appear, in the circumstances, to have the requisite competence to testify as expert in that subject.

In *Baker v MacGillis Gibbs Co.* (1944) 216 Minn 469, 13 NW2d 457, the opinion of an expert on vocational training and the placement of vocationally handicapped people was held to be inadmissible. The expert mentioned that a common laborer was capable of doing several types of

work, such as assembling work, light welding, lens grinding and shoe repair. The expert also stated that the claimant was only partially rather than totally disabled. The opinion was held to be inadmissible because it was doubtful the witness was qualified to render an opinion on the question involved. The court noted that, on cross-examination, the witness was unable to state who would employ the worker in any of the capacities mentioned in his existing physical condition.

In *Texaco Inc. v Romine* (1976, Tex Civ App) 536 SW2d 253, error ref n r e, the opinion of a professor with a degree of Ph.D. in management statistics, with experience in labor management, evaluating disability, serving on a civil service commission and consulting with firms on personnel matters, was held to be inadmissible. The expert witness mentioned that the employee, at a date 5 years prior to trial, would have been totally occupationally disabled from performing any type of heavy labor formally associated with the blue-collar class. The testimony was held to be inadmissible because it was not within the witness' field of expertise in employment. The court stated, as to the disability, the witness was not testifying from what he had observed. In fact, he was just expressing a medical opinion as to which he was no more qualified than the lowest lay witness.

Current Cases

In June 1993, the United States Supreme Court ruled on the proper standard for admissibility of scientific evidence in courtroom (McAbee, 1995). The ruling established the guidelines and it is only binding in federal court. However, it is believed that many state courts will follow the Court's ruling.

This is the case of *Daubert v Merrell Dow Pharmaceuticals*. Sissell, 1998, mentioned that after the Supreme Court decision regarding this case, the role of judges as gatekeepers was expanded.

The Supreme Court decision empowered federal judges to decide the standard of scientific evidence.

The scientific evidence at Daubert's issue related to whether the plaintiffs' (children's) congenital limb deformities were caused by Bendectin. Bendectin is the anti-nausea drug that was taken by the mother during pregnancy. The expert witness for the plaintiffs attributed causation of the limb deformity to Bendectin. The expert witness cited in vivo animal teratology studies, in vitro data, and analyzed the chemical structure of Bendectin and its similarity to other teratogens. The expert witness also reanalyzed previous published human statistical studies (McAbee, 1995).

However, on the other hand, the expert witness for the defendant Merrell Dow pointed out that, after his studies of 30 literature reviews, there were no evidence that Bendectin caused the limb deformities in the case. The federal trial judge accepted the defendant's theory and the case was dismissed. The court noted that the plaintiffs' expert failed to meet the standard for scientific evidence and it lacked "general acceptance among scientists in the field."

Nevertheless, the US Supreme Court rejected and remanded the case back to the trial court for further evaluation. The Court noted that the methods or theories have been tested; their known or potential error rate; publication or peer review; and their widespread acceptance within a relevant scientific community, are relevant and reliable (McAbee, 1995).

According to Fire Engineering, 1998, Daubert's case has been interpreted in various ways by different courts. For instance, in *McKendall v Crown Control*, 9556657, a California product liability case, the 9th U.S. Circuit Court of Appeals ruled that "expert testimony need not be based in scientific knowledge or methods but may rely on the training and experience of the witness."

Fire Engineering, 1998, also mentioned that the Daubert's case influenced the case of Michigan Millers Mutual Insurance Company v Benfield (U.S.C.A. No. 97-2138) as well. The trial court refused to allow the fire investigator hired by Michigan Millers to testify. The reason was "he has not been qualified to render an opinion in court because he allegedly failed to meet the standard of the United States Supreme Court ruling in Daubert v Merrell Dow Pharmaceuticals, Inc."

There is another example which the case was focused on how a trial judge applied the standard which was established in Daubert's case (Brostoff, 1998).

This is the case of G. E. v Joiner. The plaintiff in the case, Robert Joiner, was diagnosed with lung cancer in 1991. He had been a smoker for eight years and his family had a history of lung cancer. Despite his background, Joiner claimed that his condition was "promoted" by exposure to PCBs and he sued various manufacturers.

The expert witness of Joiner tried to link his exposure to PCBs to his condition. However, the trial court granted summary judgment to the defendants. The trial judge noted that the testimony of Joiner's expert failed to show the link between exposure to PCBs and Joiner's condition. The judge said the testimony did not rise above "subjective belief or unsupported speculation." Thus, the testimony was ruled inadmissible.

After the Supreme Court's landmark decision in Daubert v Merrell Dow Pharmaceuticals, Inc., courts have continued to struggle in admitting and excluding expert testimony in a uniform and consistent manner.

According to Schofield, 1997, in Compton v Subaru of America, Inc., the district court admitted the expert's testimony. The jury of the court awarded seven million dollars in damages to the plaintiff in an automobile accident. The expert of the plaintiff pointed that the accident vehicle's

roof was defectively designed. The defendants appealed claiming that the testimony was questionable and lacked reliability. The defendants claimed that the testimony should have been closed under Daubert's case, in which the Supreme Court held that an expert's testimony must be reliable and relevant to assist the trier of fact. However, the Tenth Circuit held that the Daubert's case was inapplicable. The court noted that the testimony of the plaintiff was based on his experience and training.

The Role of Vocational Expert

Early in the development of private sector rehabilitation, services were offered primarily to meet the needs of industrially injured workers. The major focus of the services was returning the workers with disabilities to work (Matkin, 1981). However, over the years, the scope of private rehabilitation practice has expanded beyond the workers' compensation arena. Many private rehabilitation practitioners are now serving other types of cases, such as forensic rehabilitation (Weed & Field, 1994).

Forensic rehabilitation refers to the practice of rehabilitation principles in legal setting (Black's Law Dictionary, 1990). Forensic rehabilitation expert is the one who has the education, experience, and skill needed to provide valid opinion regarding impairment and disability of an individual. The disability in question in the legal setting includes a variety of medical, social and psychological issues. The impact on total life functioning is a main consideration as well. The focus of the opinion is on identifying the vocational issues associated with specific physical and/or mental impairment. Furthermore, identification of medical, psychological, social and other special needs related to the impairment is involved as well. Rehabilitation professionals have had extensive training in the medical, social, psychological, and vocational issues

surrounding impairment and disability. This training gives them the qualification as a forensic rehabilitation expert (William, 1993).

According to Field & Sink, 1981, until the year of 1965, just a few people questioned the decision of the counselor. Decisions regarding eligibility, type, or quality of services were considered to be the “domain” of the rehabilitation counselor. However, shortly thereafter, a number of events changed that domain.

In 1965, Rehabilitation Act, Public Law 89-333 was enacted. For the first time, rehabilitation counselors were required to notify their clients of their rights to appeal ineligibility decisions. During that time, demonstrations for civil right, educational rights, social rights, the right to a civilian life and the right to die were common throughout the country. Because of the influences, changes were made in laws governing the diversification of insurance companies operation. In the late 60's, State Workers' Compensation Laws were changed from simple “payoffs” to guarantee rehabilitation services. After the changing of State Workers' Compensation Law, the supply of attorneys began to exceed the demand. In order to support the high demand of attorney, State and Federal funds became available to support legal aid society and service. Then, private-for-profit rehabilitation programs started to be available. In 1973, the Rehabilitation Act required the involvement of the clients and/or his representative in the planning and provision of rehabilitation services. Since then, many rehabilitation professionals such as evaluators, counselors, psychologists, etc., learned that they could make more money by appearing in the court. Attorneys also learned that they had a better chance to win their cases, and make more money, by using a vocational expert (Field & Sink, 1981).

The legal settings that the vocational experts are involved in include: (1) Obtain information at a deposition, (2) Obtain testimony as an expert witness, (3) use methods to establish or undermine

a witness' experts, (4) establish the hypothetical questions, (5) the role as an expert witness, (6) use of interrogatories in the discovery process and (7) appear in the courtrooms, hearings and/or deposition protocols (Leahy, 1998).

Regarding to the qualification of vocational expert, Weed & Field, 1994, noted that, "One qualification that generally supersedes other qualifications for expert status is the attainment of a terminal degree or doctorate in a vocationally related area such as guidance and counseling or vocational counseling and vocational rehabilitation counseling." (p.26)

William, 1993, mentioned that, vocational expert plays two major roles in serving her/his client. Vocational expert conducts a rehabilitation evaluation for litigation purpose. She/he also acts as an advocate such as providing information and facilitating decision-making about issues related to impairment. The other roles in serving her/his clients is performing evaluation; drawing conclusion about employability and placeability. The roles also include testifying as to the impact of impairment on future employment and earning. In addition, a major value of vocational experts to attorneys and their clients in workers' compensation lies in their ability to provide dollar figures with respect to wage loss and retaining costs.

Weed & Field, 1994, observed that vocational experts who are experienced have a better understanding of their area of expertise. They should have no difficulty assisting the attorneys in preparing for the hearing presentation. The specific areas of expertise for vocational experts are listed as below. These specific areas of expertise related to assessment, rehabilitation planning, employment and wage analyses of vocational issues of injured workers.

1. Be familiar with the general field of vocational rehabilitation. It includes federal and states laws and regulations of workers' compensation.

2. Be knowledgeable of vocational, educational and psychological assessment procedures. For example, tests, work samples, and measurements that are used in the assessment of vocational potential.
3. Be able to utilize standard references covering issues of occupations, employment, labor market and wage resources. For instance, be familiar with Dictionary of Occupational Titles.
4. Be familiar with the concept of “transferability of skills.” Be able to utilize this analysis process to determine loss of vocational functioning due to injury.
5. Be knowledgeable of competencies involved in “job analysis.” For example, the worker’s previous jobs and jobs in general as they exist in a local market.
6. Be able to determine the potential for future employment of the injured worker. The determination must be based upon the worker’s transferable skills and working capacity. It is focused on the worker’s potential and the worker’s labor market. The vocational expert should also be able to calculate a loss of access to particular jobs that exist in the economy as a result of the injury.
7. Be knowledgeable of wage and earning data for jobs that exist in the labor market. The vocational expert should be able to assist the attorney in calculating a loss of earning capacity. She/he should be able to provide sufficient employment and earning data to calculate the loss of future earning.
8. Be able to use client-interviewing skills. She/he should be able to refer the clients to appropriate consultants for functional assessment. She/he should be able to plan for services, coordinate services, provide job analysis, train and provide job placement.

9. Be able to serve as a consultant in the total rehabilitation or litigation process of the injured workers. The vocational expert should be capable to offer pertinent information to the relevant issues involved.
10. Be skilled in depositions that involve vocational presentation. She/he should be skilled in judicial hearing that relates to all areas of the vocational rehabilitation process of the injured workers. (Weed & Field, 1994, p.26-27)

Weed & Field, 1994, pointed out that attorneys frequently confuse on the basis of what constitutes a qualified vocational "specialist". When court testimony is probable, there is the additional question of whether the vocational specialist is an "expert". There is always an uncertainty in whether the vocational specialist is capable of being as an expert before the jury.

On the other hand, Leahy, 1998, has done an examination on the perceived preparedness of private rehabilitation specialists in the identified knowledge and skill areas. One of the identified knowledge and skill areas that have been examined is the preparedness in expert testimony. Leahy, 1998, found out that expert testimony with legislation and regulations are the two knowledge areas with preparedness ratings of lower than 2.50. The research indicated that the vocational specialists feel less prepared in these two areas. As Weikel reported in 1986, "work as an expert witness is a legitimate function for counselor; however, it is one for which counselors typically have no preparation" (p.524).

At the end of the 1980s and into the 1990s, there were tremendous shifts in how health care and disability were managed. Most recently, efforts to bring managed care techniques to workers' compensation and disability claims have advanced. It is believed that the efforts will even have further changes in the future. Moreover, all of these trends have clearly increased the need of attorneys and vocational experts who are familiar with forensic rehabilitation (Leahy, 1998). As

in the year of 1985, Sink & Matkin emphasized that, “ current trends in the rehabilitation field designed to assure the rights of handicapped individuals suggest that many rehabilitation professionals will be involved in legal proceedings regardless of their wishes” (p.199).

Competencies related to the selection of a vocational expert witness

All of these trends have clearly increased in the need of attorneys and vocational experts who are familiar with forensic rehabilitation. As mentioned before, vocational specialist have been increasing called upon to provide assistance to courts and attorneys in identifying the affect of injury on an individual’s earning capacity and work potential (Weed & Field, 1994). However, Weed & Field, 1994 reported went on to say, “when securing the service of a vocational specialist, attorneys frequently operate on a gut level rather than on the basis of what constitutes a qualified specialist”(p.25). This statement indicated that there are many attorneys still do not know how to best use of the expert who can testify to damages.

Burkholter, 1989, pointed out that research had not been undertaken to establish the competency criteria from the view point of attorney in selection of vocational expert witness, especially the attorneys who specialized in workers’ compensation. According to Burkholter’s study, 1989, with the sampled population of practicing Wisconsin attorneys in the cities of Appleton, Green Bay, Madison, Milwaukee, and Superior, the primary competency was the “ability to document claimant’s loss of earning capacity.” This competency criterion was desired by 81.8% of the population.

Besides the characteristic of ability to document claimant’s loss of earning capacity,

The study of Wagner, 1993, observed that attorneys who use expert witness look for two characteristics that is credibility and cost. The expert witness are required to qualify as an expert who can assist the judge, jury or the arbitrators in understanding the complex issues of the case.

The good expert knows what is fundamental to the case and cannot be conceded under cross-examination and what is negative but not essential to the case. The attorney is also concerned with the cost of the expert. Defense counsel and their clients are just as mindful of the costs of an expert. The attorney and the client would like to be charged reasonably for a case. The attorney and the client do not want to be charged \$5,000 for a case that is worth only \$10,000.

Furthermore, Weed & Field, 1994, observed that many attorneys welcome education that is possessed by the vocational expert. They stated, “ expert status is the attainment of a terminal degree or doctorate in vocationally related area such as guidance and counseling or vocational counseling and vocational rehabilitation counseling” (p.26).

Conclusion

After Rehabilitation Act, Public Law 89-333 was enacted which required rehabilitation counselor notify their client of their right to appeal ineligibility decision, the use of the vocational specialist in litigation was begun. It was begun in the 1960's with social security hearing and spread the impact to workers' compensation in private sector. Because of the nature of the responsibility of vocational rehabilitation counselor who leads an injured worker to gainful employment, rehabilitation professionals have acted as a vocational specialist to assist courts and attorneys to determine an injured worker's vocational potential and earning capacity.

However, the issues of who is qualified as a vocational expert arose. Besides, the issues of admissibility and inadmissibility of evidence that testified by the experts have been seen in the case law. Many studies also showed that vocational rehabilitation specialist feel less prepared in expert testimony and legislation.

To date, studies have not been undertaken to establish the competency criteria from the view point of practicing workers' compensation attorneys, although some studies observed that ability

to document claimant's loss of earning capacity, credibility, cost and education of witness are the criteria that the attorneys are looking for.

CHAPTER 3

Methodology

The design of this study is a descriptive analysis utilizing a survey. The survey was intended to yield data identifying:

1. Are the services of a vocational expert witness utilized in the litigation of Wisconsin Workers' Compensation claims?
2. How many vocational expert witnesses are utilized by a Wisconsin Workers' Compensation attorney per year?
3. How do Wisconsin attorneys who specialize in workers' compensation rate the characteristic competencies when selecting a vocational expert?

The competencies the attorneys were requested to rate were determined through literature review and with vocational rehabilitation professionals. This was mainly based on the study of Wisconsin attorneys of Burkholter, N., 1989.

Population and Subjects

The population for this study was comprised of practicing workers' compensation attorneys from Wisconsin State. The website of West Legal Directory, www.wld.com was utilized. With the keyword of Wisconsin for city category and the keyword of workers' compensation for practice area category, a list of 200 attorneys was compiled.

Selection of Participants

The 200 identified attorneys who were compiled from the website of West Legal Directory were utilized as the participants of the study.

Instrument and Data Collection Procedures

The study took place during the spring semester of 1999 at the University of Wisconsin-Stout. The literature related to private rehabilitation and vocational rehabilitation specialists were reviewed. The survey model of Burkholter, N., 1989 was reviewed and modified. A survey and a cover letter (Appendix A and B) were mailed to the 200 selected attorneys throughout Wisconsin who identifying themselves as specializing in workers' compensation litigation. The cover letter and the survey were sent along with a stamped self-addresses return envelope as well.

The survey first asked the respondents whether the services of a vocational expert witness were utilized in the litigation of Wisconsin Workers' Compensation claim. If a positive response was given to the utilization of vocational expert witnesses, the respondents were then requested to identify the number of vocational expert witnesses they utilized per year. If a negative response was given to the utilization of vocational expert witnesses, the respondents were then requested to discontinued the study and sent back the survey with the stamped self-address return envelope. The final survey request was to rate the competencies when selecting a vocational expert witness. Each competency statement was rated on 10-point scale (1=indicating the highest or most important characteristic; 10=indicating the lowest or least important characteristic).

On April 18, 1999, the survey was sent to the 200 participants. A second mailing was sent on May 7, 1999 to increase the total number of responses. (Appendix C).

Analytical results were comprised on June 7, 1999 by using the computer system of Microsoft Excel.

Analysis of Data

The computer system of Microsoft Excel was utilized to calculate the data of descriptive statistics. Measures of central tendency and standard deviation were used to analyze the data.

Limitation

Several limitations of the study must be acknowledged. First, the sample size of the survey is small compare to the population. Second, the subjects were compiled from the website. It limits the application of the finding to the wider population of attorneys who specialized in Workers' Compensation litigation. Furthermore, the currency of the list of the attorneys from the website was unclear. Finally, the workers' compensation systems used vary from state to state as a result of individual state workers' compensation plans. Since each state uses its own workers' compensation plan, the results of this survey must be limited to the state of Wisconsin and further limited to the individuals surveyed. Generalization relating to this study must be taken into consideration when applying the results of the survey to broader categories of individuals.

Summary

200 attorneys who were identified by the website of West Legal Directory were utilized as the participants of the descriptive study. The literature relating to the statement of problem were reviewed and the survey model of Burkholter, 1989 was reviewed and modified for the use of this study. The survey was divided into two components. The first component is to identify two factors relating to the utilization of vocational expert witnesses in workers' compensation litigation. The second component is to identify individually rated competencies as perceived by the attorneys. Each competency of vocational expert witness was rated on 10-point scale. The surveys were sent on April 18, 1999 and on May 7, 1999 respectively. The analytical results were comprised on June 7, 1999 by the computer system of Microsoft Excel.

CHAPTER 4

Results

Purpose and Methodology

This descriptive study has a twofold purpose. The first purpose of the study is to identify the factors relating to the utilization of vocational expert witnesses in workers' compensation litigation. The second purpose of the study is to identify the competencies of vocational expert witnesses as rated by attorneys. The competencies were ranked based on sample's response.

The study consisted of 200 practicing Wisconsin attorneys who specialized in workers' compensation litigation. The subjects were compiled by the website of West Legal Directory from the population throughout the state of Wisconsin.

The computer system of Microsoft Excel was utilized to calculate the data of descriptive statistics. Measures of central tendency and standard deviation were used to analyze the data.

Results

The study consisted of 200 Wisconsin attorneys who specialized in workers' compensation. One hundred and five of the 200 surveys were returned after two mailing, for a 52.5% response rate. Two surveys were returned undeliverable.

The first two questions on the survey focused on the utilization of vocational expert witnesses by Wisconsin attorneys. Question 3 through 12 requested the sampled attorneys to rate competency statements identified as important in their selection of a vocational expert witness.

The first survey question was as follows:

1. Do you utilize the services of a vocational expert witness in the litigation of Wisconsin Workers' Compensation claims?

The question required a “Yes/No” response. One hundred and three of the 200 surveys were returned addressed this question. A “Yes” response was given by 93 individuals (90.29%), indicating they rendered the services of a vocational expert witness and 10 (9.71%) recorded a “No”, which implied they did not require the services of a vocational expert witness.

The attorneys that responded “Yes” to the question were asked to continue the question 2 through 12.

The second survey question was as follow:

2. Please identify the number of vocational expert witnesses whose services you utilized per year?

Attorneys were asked to identify the number of vocational expert witnesses whose services they utilized per year. The results indicated that the mean score of the number of vocational expert witnesses the attorneys used per year were 5.91(M=5.91).

Question 3 through 12 are the questions which requested the attorneys to rate competency statements identified as important in their selection of a vocational expert witness.

Data on the average score of competencies of vocational expert witnesses indicated that participants on the whole perceived a high level of importance of the competencies of vocational expert (M=3.46, SD=. 72) on a 10-point scale (1indicating the highest and 10 indicating the lowest).

A rank-ordered list of the competencies of vocational expert witness as perceived by the sampled attorneys is reported in Table 1.

Table 1
Competencies of Vocational Expert Witness

Competencies	<u>M</u>	<u>SD</u>
Loss of earning capacity	2.14	2.79
Knowledge of disability	2.85	2.72
Employment trends	2.89	2.45
Transferable skill assessment	3.17	2.68
Expert testimony	3.46	2.92
Prior experience	3.62	2.62
Experience and education	3.76	2.64
Administer test	3.83	2.61
CRC	4.23	2.67
Cost	4.61	2.55

The ten competencies of vocational expert witnesses were modified to be:

(1) Loss of earning capacity was described as the ability to document claimant's loss of earning capacity.

(2) Knowledge of disability was described as the knowledge of functional limitation of disability.

(3) Employment trends were described as the familiarity with current employment trends, job openings, and competitive wage.

(4) Transferable skill assessment was described as the ability to provide job related transferable skill assessment.

(5) Expert testimony was described as the ability to effectively present vocational expert testimony in a court of law.

(6) Prior experience was referred as the prior experience in provision of vocational expert testimony.

(7) Experience and education was described as the professional status with regard to related experience and educational background.

(8) Administer test was referred to the ability to administer and interpret psychological and education test results.

(9) CRC was referred to the professional certification and affiliation, such as CRC (Certified Rehabilitation Counselor).

(10) Cost was referred to the cost of the service of vocational expert.

The ability to document claimants' loss of earning capacity was perceived as the most important competencies by the respondents ($M=2.14$, $SD=2.79$). The study of Burkholter, N., 1989 also indicated that the ability to document claimants' loss of earning capacity

was the most important characteristic competencies of a vocational expert. Burkholter, 1989 reported that eighty one percent of the respondents identified the variable, “Ability to document claimants’ loss of earning capacity” as the most desirable characteristic (Burkholter, 1989).

The second most important of the characteristic competencies are followed by the knowledge of functional limitation of disability (M=2.85, SD=2.72); and the third is the familiarity with current employment trends, job openings and competitive wage (M=2.89, SD=2.45). The fourth rank order of the competencies was the ability to provide job related transferable skill assessment (M=3.17, SD=2.68).

The finding of this survey indicated that ability to effectively present vocational expert testimony in a court of law and prior experience in provision of vocational expert testimony were less important. They have the mean scores and standard deviation of M=3.46, SD=2.92 and M=3.62, SD=2.62 respectively.

Furthermore, the survey showed that professional status with regard to related experience and educational background was in the rank of seventh (M=3.76, SD=2.64). The ability to administer and interpret psychological and education test results (M=3.83, SD=2.61) and the professional certification and affiliation, such as CRC (M=4.23, SD=2.67), were indicated separately at the rank of eighth and ninth. The least importance characteristic competencies of vocational expert witnesses were indicated as the cost of the service of vocational expert (M=4.61, SD=2.55).

Summary of finding

The survey has 52.5% response rate. The results of the survey indicated that there were 90.29% of the respondents utilized the services of a vocational expert witness in the litigation of Wisconsin workers' compensation claims.

Regarding the number of vocational expert witnesses who they utilized per year, the result indicated that the mean score of 5.91 (M=5.91) vocational expert witnesses were utilized by the respondents per year.

Concerning the rank order of the vocational characteristic competencies, as perceived by Wisconsin attorneys, the attorneys rated the ability to document claimants' loss of earning capacity (M=2.14, SD=2.79) as the most important qualification that they request in a vocational expert witness. This is followed by the knowledge of functional limitation of disability (M=2.85, SD=2.72) and the familiarity with current employment trends, job openings and competitive wage (M=2.89, SD=2.45). The cost of the service of vocational expert were perceived as the least important of the characteristic competencies of a vocational expert (M=4.61, SD=2.55).

CHAPTER 5

Conclusion and Recommendations

Conclusion

As was reflected in the Review of Literature in Chapter 2, there were only a few pieces of research that undertook the establishment of the competency criteria from the viewpoint of attorneys who specialize in workers' compensation. This study was replicated from the study of Burkholter, 1989 and was modified to identify the importance of characteristic competencies as perceived by attorneys in selection of a vocational expert witness. The study established statistical data on vocational expert witness utilization and competency identification.

The first component of the survey question focused on the utilization of vocational expert witnesses. Ninety percent of the respondents identified that the services of vocational expert witness were utilized. It should be noted that the population for this study was identified through the website of West Legal Directory. Selected attorneys identified themselves as offering services in the area of workers' compensation was compiled. However, the process may have been biased because the contemporary nature of the resource from the website was not dated. A different response may have resulted if an up-to-date resource could be obtained via internet or from another resources. The average number of vocational expert witnesses per year requested to provide services was 5.91. Compared to the study of Burkholter, 1989, which indicated the finding of 5.39, the numbers have not been changed significantly for the past 10 years.

In reviewing the literature and the survey model, a list of competencies of vocational expert witnesses was established. They were presented to the sampled population to rate

the identified competencies characteristic, per level of importance, as desired in the attorney's selection of a vocational expert witness.

The primary competency desired by the respondents was the "Ability to document claimants' loss of earning capacity" with the score of $M=2.14$, $SD=2.79$. The finding indicated the same result as the study of Burkholter, 1989 who reported 81.8% of the sampled population identified the ability to document claimants' loss of earning capacity as the most important competency (Burkholter, 1989).

The other desired competencies are followed by the knowledge of functional limitation of disability ($M=2.85$, $SD=2.72$); the familiarity with current employment trends, job opening and competitive wage ($M=2.89$, $SD=2.45$); and the ability to provide job related transferable skill assessment ($M=3.17$, $SD=2.68$). The second, third and fourth most important competencies are supported by the report of Weed & Field, 1994, noted that because of the nature of the responsibility of vocational rehabilitation counselors who lead an injured worker to gainful employment, rehabilitation professionals have the qualification to assist courts and attorneys to determine an injured worker's vocational potential and earning capacity (Weed & Field, 1994).

The research of Leahy, 1998 indicated that the vocational specialists feel less prepared in expert testimony (Leahy, 1998). The finding of this survey revealed that ability to effectively present vocational expert testimony in a court of law and prior experience in provision of vocational expert testimony were less important. They have mean scores and standard deviation of $M=3.46$, $SD=2.92$ and $M=3.62$, $SD=2.62$ respectively. Typically, expert testimony required the cooperation between the attorney and the vocational

specialist to organize questions to elicit testimony in a logical sequence that can be easily understood by lay persons (Lynch, 1983).

Furthermore, Weed & Field, 1994 observed that many attorneys welcome education that is possessed by the vocational expert. However, the finding of this survey showed that the professional status with regard to related experience and educational background was in the rank of seventh ($M=3.76$, $SD=2.64$). As well as the ability to administer and interpret psychological and educational test results ($M=3.83$, $SD=2.61$) and the professional certification and affiliation, such as CRC ($M=4.23$, $SD=2.67$). These competencies were recorded as the third and the second least important characteristic. Obviously, along with the educational background that was possessed by the vocational expert, the ability to translate the results of evaluation into functionally relevant vocational terms was strongly recommended (Lynch, 1983).

In the review of literature in Chapter 2, the issues of admissibility and inadmissibility of evidence that testified by the experts have been seen in the case law. Again, clearly, although the educational background is essential for selection of vocational expert witnesses, the other components should be taken into account. For instance, the capacity to prepare all basic exhibits and outlines of testimony carefully, avoid unnecessary conversation and provide a clear and adequate explanation of methods employed reaching conclusions (Brodsky, 1981).

Finally, the cost of the services of vocational expert witnesses was listed as the least important competency characteristic in selection of a vocational expert witness. Although Wagner, 1993 observed that attorneys concerned with the cost of the expert, the results of this study acknowledged that the cost of the service of vocational expert witnesses was

the least important competency ($M=4.61$, $SD=2.55$). According to Weed & Field, 1994, the cost of the service of vocational expert was usually fixed to the hourly wage (Weed & Field, 1994).

Recommendation

The 10-point scale was utilized to rate the competencies desired by the attorneys when selecting the vocational expert witness. The result of the mean scores that were used to rank-order the characteristic was not significantly different. If this study was to be repeated, it is suggested that the 5-point scale be utilized to rate the competencies desired by the attorney when selecting the vocational expert witness.

As it was mentioned before, the selection of sampled population was done via internet. The currency of the resource from the internet was unclear. The adequacy of the specialty of the attorneys was unable to be determined. It is suggested that the other networks can be used to obtain the sampled population.

Besides, the survey provided a previously identified list of competencies for the attorneys to rate. The replication of the study may be done by providing a comment section or a section to write-in preferred competencies. A comment section can provide an opportunity for the respondent to identify competencies independently.

As it was mentioned, the workers' compensation systems used vary from state to state as a result of individual state workers' compensation plans. Since each state uses its own workers' compensation plan, the results of this survey must be limited to the state of Wisconsin. It is recommended that this research study be replicated in another state. The results of replication in another state would assist to identify the outcome of the rating competencies; whether it is unique to the state of Wisconsin or the surveyed population in

another state will respond in the similar manner regarding the competencies of vocational expert witness.

It is also recommended that the surveyed population be replaced from attorneys to rehabilitation professionals in both public and private sector. The replication of the study can be undertaken whether in workers' compensation system or social security system. Many rehabilitation professionals will be involved in a legal setting regardless of their wishes to assure the right of people with disabilities (Sink & Matkin, 1985). It may be interesting to obtain the rating of the identified competencies from the rehabilitation professionals. The results of such an undertaking would assist to determine the perspective of the rehabilitation professionals regarding the competencies of vocational expert witness.

As more and more vocational rehabilitation specialists are involved in legal proceeding, more emphasis will be placed on the competencies necessary to function as a vocational expert witness. William, 1993 mentioned that the training in rehabilitation curriculum gives the rehabilitation counselors the qualification as a forensic rehabilitation expert (William, 1993). However, according to the study of Leahy, 1998, expert testimony and regulation are the two areas that the private rehabilitation specialists feel less prepared (Leahy, 1998). The information gathered from this study may assist in vocational rehabilitation curriculum development both in the graduate level and undergraduate level. An emphasis placed on vocational expert testimonial preparation is essential such as the area of the ability to document claimant's loss of earning capacity ($M=2.14$, $SD=2.79$) and the knowledge of functional limitation of the disability ($=2.85$, $SD=2.72$) as were preferred by the sampled attorneys in this study. A well prepared forensic rehabilitation

professional at the educational level may better prepare an individual for their role as a specialist in the rehabilitation profession.

Conclusion

The research of the service of vocational expert witness in Wisconsin was undertaken. This study indicated that there were 90.29% of the respondents utilized the services of vocational expert witness. Moreover, in average, there were 5.91 vocational expert witnesses were used by the respondents per year.

Competencies rated by the respondents in their selection of a vocational expert witness were also identified. It was indicated that “ability to document claimant’s loss of earning capacity” (M=2.14, SD=2.79) was perceived as the most important competencies by the respondents.

It is recommended that this study be replicated in another state to assess the differences and the similarity of the outcome. It is also suggested that the information that was obtained in this study be utilized to enhance the quality of curriculum development in vocational rehabilitation.

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APPENDIX A

It is not anticipated that this study will present any social risk to you. The information gathered will be kept strictly confidential and any reports of the findings of this research will not contain your name or any other identifying information. Your participation in this project is completely voluntary. You have the right to refuse to participate and that your right to withdraw from participation at any time during the study will be respected with no coercion or prejudice.

Please answer the following question:

1. Do you utilize the services of a vocational expert witness in the litigation of Wisconsin Workers' Compensation claims?

_____ Yes _____ No

If you have answered Yes to the question above, please continue. If you responded No, please return the survey at this time.

2. Please identify the number of Vocational Expert Witness whose services you utilize per year? _____ Witnesses

Direction: Listed below are ten statements regarding assumed competencies of Vocational Expert Witnesses. After reading each statement carefully, please rate each statement based on its level of importance to you. Indicate your answer by writing a number between 1 and 10 in the blank, with 1 indicating the highest importance and 10 indicating the lowest importance.

HIGHEST 1.....2.....3.....4.....5.....6.....7.....8.....9.....10 LOWEST

- 3. _____ Ability to document claimant's loss of earning capacity.
- 4. _____ Ability to effectively present vocational expert testimony in a court of law.
- 5. _____ Professional certification and affiliation, such as CRC.
- 6. _____ Professional status with regard to related experience and educational background.
- 7. _____ Familiarity with current employment trends, job openings, and competitive wage.
- 8. _____ Prior experience in provision of vocational expert testimony.
- 9. _____ Knowledge of functional limitation of disability.
- 10. _____ Ability to provide job related transferable skill assessment.
- 11. _____ Ability to administer and interpret psychological and education test results.
- 12. _____ Cost of the service of vocational expert.

APPENDIX B

April 16, 1999

Dear Mr./Ms.

I am a graduate student of University of Wisconsin-Stout. I am undertaking a research study as a part of the requirements for a M. S. degree in Vocational Rehabilitation. The purpose of my study is to identify and rank order the professional competencies of a vocational expert witness from the perception of attorneys who specialized in workers' compensation. The study may provide a guide for curriculum development and enhancement of personnel requirement.

I have got your information about your expertise from West Legal Directory's website. As a practicing expert in this field, your background and experience are essential to provide reliable data. It will be appreciated if you would contribute your expertise to make this study a success. A summary of survey results will be available upon request.

All survey results are strictly confidential. Return envelopes are coded exclusively for the follow-up of non-respondents. Individual identification will not be made.

Your cooperation in filling out the enclosed survey and returning it by April 30, 1999, in the self-addressed, stamped envelop will be greatly appreciated.

Thank you for your time and help in the completion of this study.

Sincerely,

Leeza Ong
Student Researcher

Robert Peters
Research Advisor

APPENDIX C

May 6, 1999

Dear Mr./Ms.:

This letter is in reference to the survey I sent you on April 16, 1999. The survey asked for information regarding your utilization of vocational expert witness.

To date, a reply has not been received from you. In order to obtain accurate information, it would be appreciated if you take a few minutes to fill out and return the self-addressed and stamped survey.

While your participation in completing the survey is voluntary, your assistance is greatly appreciated. A summary of the survey results will be available upon request.

The time and energy you dedicate to this survey is greatly appreciated. Thank you in advance for your time and help in the completion of this study.

Sincerely,

Leeza Ong